Editor's Note: Reconsideration denied by order dated June 30, 1997

HEIRS OF HERCULANO MONTOYA

IBLA 93-431 Decided December 13, 1996

Appeal from a decision of the Albuquerque, New Mexico, District Office, Bureau of Land Management, rejecting color-of-title application NM-81419.

Affirmed.

1. Color or Claim of Title: Applications--Res Judicata

The doctrine of administrative finality does not preclude adjudication of a color-of-title application by all the heirs of an individual alleged to have held the land sought under claim or color of title, notwithstanding the final rejection of an earlier application by one of those heirs, where there is no privity between the heirs and the current application includes additional land and provides new information supporting the heirs' claim to the land.

2. Color or Claim of Title: Applications--Color or Claim of Title: Description of Land

A class 1 color-of-title claim requires proof that the land has been held in good faith and in peaceful adverse possession by a claimant, his ancestors, or grantors for more than 20 years, under claim or color of title based on a document from a party other than the United States, which document purports, on its face, to convey the claimed land to the applicant or the applicant's predecessors; and that valuable improvements have been placed on the land, or some part of the land has been reduced to cultivation. An applicant under the Color of Title Act has the burden of proof to establish to the Secretary of the Interior's satisfaction that the statutory requirements for purchase under the Act have been met and a failure to carry the burden of proof with respect to one of the requirements is fatal to the application. BLM properly rejects a color-of-title application where the applicants fail to submit a document purporting, on its face, to convey title to the claimed land to their predecessor-in-interest.

APPEARANCES: Nick Gonzales, Jr., pro se and for the other appellants; Gayle E. Manges, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

The heirs of Herculano Montoya (heirs) have appealed from a May 14, 1993, decision of the Albuquerque, New Mexico, District Office, Bureau of Land Management (BLM), rejecting color-of-title application NM-81419. 1/

On February 21, 1990, the heirs filed a class 1 application with BLM pursuant to the Color of Title Act, as amended, 43 U.S.C. § 1068 (1994), seeking title to 9 acres of public land located in the SE¼ sec. 31, T. 16 N., R. 8 E., New Mexico Principal Meridian, Santa Fe County, New Mexico. The land sought in the application consisted of a 6-acre tract described by metes and bounds 2/ and a 3-acre parcel "to the north of this plot, as the small holding claim 1250 Tr. 2 consisted of 9.91 acres." 3/ The heirs stated that Herculano Montoya had held and possessed the land, which was adjacent to his private property, since 1939, tracing their title to a May 2, 1941, quitclaim deed from Emerenciana Rael de Gomez, Genoveva Rael de Granito, and Adelaido Rael (Rael de Gomez et al.) to Herculano

1/ Nick Gonzales, Jr., has pursued this appeal on behalf of the "heirs of Herculano Montoya," identified in the color-of-title application as Manuel A. Montoya, Pete B. Montoya, Jessie Montoya, Margaret Gonzales (Nick Gonzales' mother), Joaquin Montoya, and Corrine M. Vigil. See 43 CFR 1.3(b)(3)(i). The applicants are the children of Herculano Montoya, who died in 1972, and Francisca Oriol Padilla de Montoya, who died in 1974. In 1985, each of the three brothers, Manuel A. Montoya, Pete B. Montoya, and Joaquin Montoya, quitclaimed his interest in 6 acres of land to his three sisters, Jessie Montoya, Margaret Gonzales, and Corrine Vigil (heirs' Feb. 24, 1995, Letter to the Board (Feb. 24, Letter), Enclosures 12, 13, and 14). Corrine Vigil and Manuel Montoya later died (Feb. 24, Letter at 3). In 1995, Margaret Gonzales quitclaimed her interest in the 6 acres to her two sons, Nick Gonzales, Jr., and Rudy Gonzales (Feb. 24, Letter, Enclosure 15).

2/ The boundaries of the 6-acre parcel were described as beginning at a point 415.80 feet on a bearing of N. 89° 29' W. from the USGLOS brass cap at the intersection of secs. 31 and 32, T. 16 N., R. 8 E., and secs. 5 and 6, T. 15 N., R. 8 E., New Mexico Principal Meridian, Santa Fe County, New Mexico. From that point, they ran 402.28 feet on a bearing of N. 89° 29' W. to the southwest corner, thence 515.80 feet on a bearing of N. 01° 49' E. to the northwest corner, thence 515.80 feet on a bearing of S. 89° 29' E. to the northeast corner, thence 433.73 feet on a bearing of S. 01° 49' W. "to a point with X in concrete," and, finally, 141.58 feet on a bearing of S. 55° 06' W. to the place of beginning.

3/ Small holding claim 1250 was patented to Bartolo Rael in October 1902.

Montoya and Francisca Oriol Padilla de Montoya, his wife. 4/ They asserted that they first learned that they did not have clear title in 1972, after Herculano Montoya's death. The heirs claimed improvements on the land consisting of pens for goats, sheep, pigs, and chickens, but ascribed no value to these improvements. They also noted that one-fifth of an acre next to the pen had been used to grow a few vegetables from 1939 to 1945 and that the land was still used for grazing livestock. The heirs further stated that the land "was a small holding claim 1250 Tract 2" and referred to the attached deeds. Witness statements and a private survey plat prepared by Mitchel K. Noonan were also submitted with the heirs' color-of-title application.

In a case profile dated March 10, 1993, the BLM realty specialist noted that three deeds had been submitted with the heirs' application: a 1902 patent granted to Bartolo Rael for small holding claim 1250 embracing lot 1, sec. 31 and lot 2, sec. 32, T. 16 N., R. 8 E., containing 9.91 acres; a quitclaim deed issued to Abelina Romero de Rael in 1927 for 55.30 acres including small holding claim 1250 and various other described land; and the May 6, 1941, quitclaim deed. The realty specialist concluded that the heirs had not satisfied the requirements of the Color of Title Act because the deeds did not describe or convey the subject land to the applicants or their predecessor-in-interest, but instead described land south of the subject land near the Rio Cienega. He further found, based on a field examination, that the only structure on the subject land was a chicken pen and that the land was not suitable for farming. He therefore recommended that the application be rejected for failure to provide a deed purporting to convey the claimed land, and for lack of valuable improvements.

In its May 1993 decision, the District Office rejected the heirs' color-of-title application in its entirety because they had failed to supply a deed conveying the land sought to their ancestor and for lack of valuable improvements. BLM held that the deeds submitted with the application described land south of the applied for land.

4/ The deed, which was included with the application, described the parcel as:

"A certain piece of land situate in precinct No. 6 in the County of Santa Fe Cienega, Bounded on the north by El Camino Real; East bounded also by El Camino Real; west by properties of Jose Baca and Tomas Baca and on the south by property of Jose Baca. Also the improvements consisting of one-4 rm house, two garages and the right to the use of the well therein.

"From East to west on the north side measures 350 ft. more or less; thence running south on the west side 1043 ft.[;] thence running east on the south side 217 ft.[;] thence running north and to the place of beginning 1043 ft. Twp 15 16N. R8E.

"The house is not built on the above described land and the description of the house is thus given:

"Bounded on the north by Government land; on the East by Adelaido Rael; on the west free egress and ingress and on the south by the road."

On appeal, the heirs contend that they have submitted a deed to the subject land, the May 1941 deed, which describes two pieces of property: "land south of the 'subject land' where most of the crops were grown"; and acreage containing the house, the animal pens, and the grazing area (Statement of Reasons (SOR) at 1). The heirs concede, however, that there are difficulties with the deed, since it contains no metes and bounds description of either parcel, and that questions exist concerning the northern and western boundaries of the second tract. As to the lack of valuable improvements, the heirs explain that they did not put any major improvements on the land because animals still grazed there, adding that they had planned to place some mobile homes on the property around the time of Herculano Montoya's death in 1972, but postponed any action when they learned that BLM was claiming the land. The heirs identify problems with Bartolo Rael's 1902 patent and various surveys of the area and conclude that, absent resolution of these issues, BLM cannot properly decide their application.

BLM has moved to dismiss the appeal on the ground that the doctrine of administrative finality precludes the Board from adjudicating the heirs' color-of-title application because of BLM's previous final rejection of Corrine M. Vigil's August 4, 1981, color-of-title application (NM-46813) for 6 acres of land in the SE¼ sec. 31, which application relied on the May 1941 deed from Rael de Gomez et al. to the Montoyas (Answer at 3-5). BLM initially rejected Vigil's application in 1982 because she had failed to produce a document identifying and conveying the 6 acres to her, and because no improvements existed on the land (Answer at 3). The Board subsequently set aside that decision because BLM had not given Vigil an opportunity to submit additional evidence supporting her claim and remanded the case to BLM for that purpose. Corrine M. Vigil, 74 IBLA 111, 113-14 and n.2 (1983). By letter dated August 23, 1983, and received by Vigil on August 24, 1983, BLM afforded Vigil 45 days from receipt of the letter to submit further evidence proving her entitlement to her claim (Answer, Exh. 1). However, no such information was ever submitted and, by decision dated November 9, 1983, BLM rejected Vigil's application "for non-compliance with [its] request." Vigil did not appeal that decision, and it became final for the Department.

BLM contends that the current application filed by the heirs seeks the same land claimed by Vigil and identifies Vigil as one of the applicants. BLM asserts that the present appeal involves essentially the same claim as the one filed by Vigil and that, since the rejection of Vigil's application became final when she failed to appeal, the heirs' appeal must be dismissed on administrative finality grounds.

BLM argues that the heirs' application must be rejected in any case because, despite the heirs' submission of the additional patent to Bartolo Rael for small holding claim 1250, the application still does not include a deed adequately describing the subject land and purporting to convey it

to the heirs or their predecessors-in-interest. BLM further submits that no improvements exist on the property and that no part of it has been reduced to cultivation since 1939 to 1945, when 1/5 of an acre was cultivated (Answer at 5). 5/

In response, the heirs deny that their application is barred by the doctrine of administrative finality. While acknowledging that part of their claim includes the land sought by Vigil, they contend that they have submitted additional information regarding the property which must be considered (Feb. 24, 1995, Letter at 3). 6/

[1] As a general rule, the doctrine of administrative finality precludes the Department, absent compelling legal or equitable reasons, from considering an agency decision in later proceedings when a party, or its predecessor-in-interest, either had an opportunity to obtain Departmental review and took no action, or appealed and the decision was affirmed. Beard Oil Co., 117 IBLA 54, 57 (1990); Lloyd D. Hayes, 108 IBLA 189, 193 (1989); Turner Brothers Inc. v. OSM, 102 IBLA 111, 120-21 (1988). The principle applies only to those parties actually involved in the earlier proceedings and their privies and arises only where the later proceedings involve the same subject matter, the same parties, and the same issues. See Beard Oil Co., supra.

Although Vigil is one of the parties to the case now before us and the land claimed by the heirs includes the 6-acre parcel sought by her in her 1981 application, we conclude that the present appeal is not barred by the doctrine of administrative finality. The heirs include applicants who were not parties to the earlier appeal and are not in privity with Vigil because they do not derive their interest in the property from her. See United States v. Leroy S. Johnson, 39 IBLA 337, 345 (1979), aff'd in part and rev'd in part, Civ. No. 79-0486 (D. Utah June 17, 1981). See also 50 C.J.S. Judgments § 814(d)(2) (1947) (since the heirs of an estate do not claim through or under one another, no privity exists between them which would make a judgment rendered in a suit in which one was a party binding and conclusive on those who were not parties or represented). There is no evidence that Vigil sought to represent the other heirs in

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5/ BLM also questions whether each of the heirs, especially Nick Gonzales, Jr., obtained his or her interest in good faith, since they or their predecessors knew in 1972 that BLM claimed title to the land. Because we find the application deficient in other respects, we need not address this issue.

6/ The heirs also apparently claim actual title to the land sought in their application, contending that the land was previously patented by the United States to Bartolo Rael in October 1902 (in satisfaction of his small holding claim 1250), was deeded to Herculano Montoya under the May 1941 deed, and then passed to his heirs on his death (Feb. 24, 1995, Letter at 1-2).

the prior action. We, therefore, conclude that the other heirs are not privies of Vigil and are not bound by the Department's adjudication of her earlier application.

Furthermore, the present application includes land that was not part of Vigil's application and provides new evidence supporting the heirs' claim to the land. Since the subject matter of the current appeal and the issues raised are not identical with those addressed in Vigil's application, the prerequisites for invoking the doctrine of administrative finality do not exist, and BLM's motion to dismiss is denied. See Felix F. Vigil, 129 IBLA 345, 346-47 (1994).

[2] Turning to the merits of BLM's rejection of the heirs' color-of-title application, we note that the Color of Title Act, 43 U.S.C. § 1068 (1994), sets forth the requirements that must be met by a claimant in order to receive a patent under the Act:

> The Secretary of the Interior (a) shall, whenever it shall be shown to his satisfaction that a tract of public land has been held in good faith and in peaceful, adverse, possession by a claimant, his ancestors or grantors, under claim or color of title for more than twenty years, and that valuable improvements have been placed on such land or some part thereof has been reduced to cultivation, * * * issue a patent for not to exceed one hundred and sixty acres of such land upon the payment of not less than $1.25 per acre * * *.

The method for obtaining a patent outlined in subsection (a) of 43 U.S.C. § 1068 (1994) is known as a "class 1" claim. 43 CFR 2540.0-5(b).

An applicant under the Color of Title Act has the burden to establish to the Secretary of the Interior's satisfaction that the statutory requirements for purchase under the Act have been met. John P. Montoya, 113 IBLA 8, 13-14 (1990); Hal H. Memmott, 77 IBLA 399, 402 (1983); Corinne M. Vigil, 74 IBLA at 112; Jeanne Pierresteguy, 23 IBLA 358, 262, 83 I.D. 23, 25 (1975); Homer W. Mannix, 63 I.D. 249 (1956). The applicant must establish that each of the requirements for a class 1 claim has been met. A failure to carry the burden of proof with respect to one of the elements is fatal to the application. See John P. Montoya, 113 IBLA at 14, and cases cited.

As an initial matter, we note that, to the extent the heirs assert that they have actual title to the claimed land (see note 6, supra), that issue is not properly raised in a color-of-title application. Shirley & Pearl Warner, 125 IBLA 143, 148 (1993); Jerome L. Kolstad, 93 IBLA 119, 122 (1986). A color-of-title applicant may not contest Government ownership of the land sought. Loyla C. Waskul, 102 IBLA 241, 244 (1988), and cases cited. By filing a color-of-title application, the applicant necessarily concedes that legal title to the land is in the United States and seeks

to have the United States convey actual title to him. Therefore, at least as far as adjudication of that application is concerned, the applicant is estopped from alleging that he owns legal title to the land. Benton C. Cavin, 83 IBLA 107, 109 n.2 (1984).

A color-of-title applicant must show that the land sought was held by him or his predecessor-in-interest for the requisite statutory period "under claim or color of title." 43 U.S.C. § 1068 (1994). A claim of title supporting a color-of-title application must be based on an instrument from a source other than the United States, which on its face purports to convey the claimed land. Mabel M. Sherwood, 130 IBLA 249, 250 (1994); Shirley & Pearl Warner, 125 IBLA at 147; John P. & Helen S. Montoya, 113 IBLA at 14; Loyla C. Waskul, 102 IBLA at 243; Benton C. Cavin, 41 IBLA 268, 270 (1979). The conveyance document initiating the chain of title must describe the land conveyed with such certainty that its boundaries may reasonably be ascertained and must include the land sought under the color-of-title application. 7/ Mabel M. Sherwood, supra; Charles M. Schwab, 55 IBLA 8, 11 (1981); Benton C. Cavin, 41 IBLA at 270.

In the present case, the heirs rely on the May 1941 deed from Rael de Gomez et al. to their immediate ancestor. The deed describes a tract of land situated in the "County of Santa Fe Cienega," bounded on the north and east by "El Camino Real" and on the south and west by the properties of Jose and Tomas Baca, all in Ts. 15 and 16 N., R. 8 E., New Mexico Principal Meridian, Santa Fe County, New Mexico. The deed also describes another parcel, containing a house, bounded on the north by Government land, on the east by the property of Adelaido Rael, on the west by free egress and ingress, and on the south by the road. BLM concluded that this description embraces land south of the land identified in the heirs' color-of-title application (Mar. 10, 1993, Case Profile; Decision at 1). 8/

The heirs apparently now concede on appeal that the description of the first tract does not encompass the 9 acres of land they now seek in

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7/ As long as the initial document in a chain of title adequately describes the conveyed land, subsequent instruments need only "provide in some legally recognized manner for conveyance of the land." Benton C. Cavin, 41 IBLA at 271.

8/ No explanation for this conclusion was stated in the record. Apparently, BLM regarded "El Camino Real" as the road now found in the NE¼ sec. 6, T. 15 N., R. 8 E., New Mexico Principal Meridian, Santa Fe County, New Mexico. That road, which comes quite a distance from the south, runs in a northwesterly and then northeasterly direction through the Town of Cienega and eventually continues onto the City of Santa Fe (SOR, Enclosures 3 and 8; Answer, Exh. 4 at 2). There is also a short branch of that road in the town that runs to the southwest in the NE¼ sec. 6. Id. That road could border a tract of land on the north and east in the NE¼ sec. 6 such that the tract would in fact be south of the land now sought. This is reflected on Noonan's 1981 plat.

their color-of-title application, but rather land to the south, and that questions exist concerning the northern and western boundaries of the second parcel (SOR at 1). The record contains no conclusive evidence regarding the location in 1941 of the road known as "El Camino Real" or the properties of the Bacas in either of the two identified townships. 9/ Nor does the deed or anything in the record explain the references marking the boundaries of the second parcel or the situs of those boundaries at the time of the 1941 deed or now. 10/

Appellants have failed to meet their burden to satisfactorily explain the references in the deed or show that there was some identification which could be relied on by someone referring to the deed to ascertain where the tract is located on the ground. See Nora Beatrice Kelley Howerton, 71 I.D. 429, 431 (1964). We find it impossible to pinpoint the site of the tract of land described in the deed or determine that it encompassed the applied for land. 11/ We do not doubt that Herculano Montoya and his descendants have, since 1939, used the land sought and may have genuinely believed that the land belonged to them, at least until informed to the contrary sometime around 1972. Nonetheless, color-of-title claimants are not entitled to land applied for in the absence of some document that affirmed their belief and rendered their possession of the land "under claim or color of title," as required by the applicable Federal statute. Loyla C. Waskul, 102 IBLA at 247-48; Jeanne Pierresteguy, 23 IBLA at 367, 83 I.D. at 27. Appellants have failed to carry their burden of proving the existence of such document

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9/ The metes and bounds description of the tract in the deed also does not close. While the eastern and western boundaries of the 4-sided tract are both 1,043 feet in length, the southern and northern boundaries are 217 and 350 feet in length.

10/ According to the deed, the house was not situated on the land described, but we assume it was situated somewhere in the vicinity of that land since the land was said to encompass two garages and a well that were presumably used in connection with the house. Further, we take the reference to "the road" to mean "El Camino Real" since that road is the only one mentioned in the deed. Also, the road is placed south of the house and north of the land. Thus, it seems likely that the house was located to the north just across the road from the land. However, the absence of any evidence regarding where the physical structure once stood renders it impossible to fix conclusively the location of the house, let alone determine that it was situated on the land now sought by the heirs.

11/ The heirs also provide a copy of a February 1927 deed from Rael de Baca et al. and Rael de Gomez et al. to Abelina Romero de Rael, involving a 55.30-acre tract of land. We are not persuaded that this tract encompassed the 9 acres of land sought and conclude that, in any event, the record contains no evidence showing that the land described in the February 1927 deed devolved to Rael de Gomez et al. or that it then passed from them to Montoya under the May 1941 deed.

and thus to justify the United States in divesting itself of that land pursuant to the statute. Therefore, their color-of-title claim was properly rejected. 12/

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

David L. Hughes
Administrative Judge

I concur:

James L. Burski
Administrative Judge

12/ While we need not decide whether the heirs' color-of-title application satisfies the other requirements of the statute, we note that, to the extent they rely on the old chicken pen as an improvement, they have not shown that it enhanced the value of the land at the time of application. See John P. Montoya, 113 IBLA at 15, and cases cited. Nor have the heirs satisfied the cultivation requirement, since none of the land has been cultivated since the early 1940's when part of it was used to grow vegetables. Id.